

## Message Text

LIMITED OFFICIAL USE

PAGE 01 BERN 00890 271301Z

46

ACTION L-02

INFO OCT-01 EUR-12 ISO-00 JUSE-00 TRSE-00 SEC-01 SCS-03

SCA-01 EB-07 SP-02 CIAE-00 INR-07 NSAE-00 /036 W  
----- 075943

R 271113Z FEB 75

FM AMEMBASSY BERN  
TO SECSTATE WASHDC 316

LIMITED OFFICIAL USE BERN 0890

E.O. 11652: N/A

TAGS: PFOR, CFED, SZ (JUDICIAL ASSISTANCE TREATY)  
SUBJ: SWISS TREATY AND SWISS IMPLEMENTING LEGISLATION

REF: STATE 42846

1. EMBOFF CALLED ON DR. MARKEES FEB. 26 TO FURTHER DISCUSS  
ART. 26 OF IMPLEMENTING LEGISLATION IN LIGHT OF REFTEL.  
DISCUSSION CENTERED ON POLITICAL AND TECHNICAL ASPECTS  
OF PROBLEMS WITH ART. 26.

2. POLITICAL: DR. MARKEES STATED IT WOULD BE "PRACTICALLY  
USELESS" TO TRY TO CHANGE ART. 26 NOW. UPPER HOUSE OF  
PARLIAMENT (STAENDERAT) SCHEDULED TO DEBATE TREATY AND  
IMPLEMENTING LEGISLATION MARCH 19. DR. MARKEES SAID THAT  
OPPONENTS OF TREATY WOULD ATTEMPT TO USE ANY CHANGES IN  
IMPLEMENTING LEGISLATION AT THIS TIME AS MEANS TO ATTACK  
TREATY BY ARGUING SUCH A CHANGE WOULD BE A FURTHER  
CONCESSION TO U.S. (DR. MARKEES AGREED THAT IN FACT IT  
WOULD NOT BE A TRUE CONCESSION SINCE GOS WOULD MERELY  
BE COMPLYING WITH PROVISION IN ALREADY SIGNED TREATY  
BUT HE SAID "FROM OPTICAL POINT OF VIEW" IT WOULD BE HARM-  
FUL.) DR. MARKEES SAID THAT IN ADDITION TO AFFECT CHANGE  
WOULD HAVE ON TREATY RATIFICATION CHANGE WOULD ALSO CAUSE  
"GRAVE POLITICAL PROBLEMS" IN RELATIONSHIP BETWEEN FED.  
GOVT AND CANTONS. CONSTITUTIONALLY FED. GOVT CANNOT  
LEGISLATIVELY COMPEL CANTONS TO ALTER PROCEDURAL CODES  
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BERN 00890 271301Z

BUT FED. GOVT MAY REQUIRE CANTONS TO COMPLY WITH SWISS

TREATY OBLIGATIONS. DR. MARKEES SAID CANTONS WOULD  
RESENT FED. GOVT USING TREATY AS MEANS TO DO WHAT FED.  
GOVT WOULD, IN THE ABSENCE OF A TREATY, BE FORBIDDEN TO DO.

3. DR. MARKEES REPEATED HIS BELIEF THAT IN PRACTICE HE DOES  
NOT THINK "GREAT DIFFICULTIES" WOULD ARISE FROM ART. 26  
AS DRAFTED ALTHOUGH HE AGREED THAT" ONE CANNOT EXCLUDE  
THE POSSIBILITY THAT A RELUCTANT WITNESS WOULD TRY TO  
HAMPER (SIC) AMERICAN PROCEDURES". DR. MARKEES THEN SAID  
THAT IF EXPERIENCE (AFTER TREATY IN EFFECT) REVEALS PROBLEMS  
WITH ART. 26 GOS COULD POSSIBLY CONSIDER CHANGING IT. IN  
COURSE OF CONVERSATION DR. MARKEES SEVERAL TIMES ASKED  
"WHY SO LATE?" "WHY WASN'T THIS PROBLEM BROUGHT UP BEFORE?"  
HE SAID IF MATTER RAISED 3 OR 4 MONTHS AGO ART. 26 MIGHT  
HAVE BEEN CHANGED.

4. TECHNICAL: DR. MARKEES STATED ART. 26 DRAFTED BY ROBERT  
PFUND WHO WAS THAN IN FED. TAX ADMINISTRATION BUT IS NOW  
RETIRED . DR. MARKEES PHONED MR. FPFUND FOR HIS OPINION  
ON THIS SUBJECT. MR. PFUND POINTED OUT THAT FED. SUPREME  
COURT HAS STATED DEFINITEIVELY THAT IN TAKING TESTIMONY  
UNDER CANTONAL PROCEDURAL CODES WITNESS MUST BE ADMONISHED  
TO TELL TRUTH, MUST BE ADVISED OF CONSEQUENCES FOR FAILURE  
TO TELL TRUTH AND MUST BE TOLD THAT RECORD WILL INCLUDE  
SUCH INSTRUCTIONS. AFTER WITNESS HAS TESTIFIED HE MUST  
SIGN TRANSCRIPT. NORMALLY SIGNATURE IS ONLY "CONFIRMATIVE"  
BUT PFUND AND MARKEES SUGGESTED IN CASES ARISING UNDER  
TREATY CANTONAL AUTHORITIES WOULD BE INSTRUCTED TO HAVE  
WITNESS SIGN "CONFIRMING THAT STATEMENT IS TRUE". DR.  
MARKEES POINTED OUT THAT SUBSTANTIVELY SWISS AND AMERICAN  
PROCEDURES EQUIVALENT. WITNESS REMINDED OF OBLIGATION TO  
TELL TRUTH AND OF PENALTIES FOR PERJURY. HE AWARE, HOWEVER,  
OF "FORMALISTIC" NATURE OF AMERICAN EVIDENTIARY REQUIRE-  
MENTS.

5. DR. MARKEES MENTIONED NEGOTIATING HISTORY ON THIS SUBJECT  
IN PASSING BUT DID NOT DEVELOP POINT. EMBOFF STATED  
(PER PARA 5 REFTEL) THAT US BELIEVES THAT IT IS UP  
TO SWISS TO RESOLVE MATTER AND MENTIONED ALTERNATIVES SET  
FORTH IN PARA 5 REFTEL. DR. MARKEES MERELY SMILED AT  
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 BERN 00890 271301Z

SUGGESTION MATTER COULD BE SOLVED BY "RE-INTERPRETATION  
OF EXISTING LEGISLATION". TO THE SUGGESTION OF AN EXCHANGE  
OF NOTES HE REPLIED "WHAT WOULD IT ADD?". HIS ANSWER TO  
THE SUGGESTION THAT THE LEGISLATION BE AMENDED IS DESCRIBED  
ABOVE.

6. RECOMMENDATION: EMBASSY AGREES WITH DR. MARKEES'  
ANALYSIS OF POLITICAL SITUATION AND SUGGESTS THAT NO

EFFORT BE MADE WHICH WOULD DERAIL TREATY RATIFICATION  
PROCESS. AFTER TREATY IN EFFECT AND IF PROBMLEMS DEVELOP  
IN PRACTICE UNDER ART. 26 , USG MAY REQUEST THAT GOS HONOR  
TREATY COMMITMENTS AND AMEND LEGISLATION TO COMPLY WITH  
TREATY. ALTERNATIVELY/ADDITIONALLY EMBASSY SUGGESTS DEPT  
MAY WISH INVESTIGATE POSSIBILITY THAT TESTIMONY OBTAINED  
AS DESCRIBED PARA 4 ABOVE BE CONSIDERED ADMISSIBLE IN U.S.  
COURTS.  
DAVIS

LIMITED OFFICIAL USE

NNN

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** n/a  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 27 FEB 1975  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** greenet  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1975BERN00890  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Film Number:** D750069-0842  
**From:** BERN  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1975/newtext/t1975028/aaaaagzm.tel  
**Line Count:** 124  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ACTION L  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 3  
**Previous Channel Indicators:** n/a  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** 75 STATE 42846  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** greenet  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 26 JUN 2003  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <26 JUN 2003 by WorrelSW>; APPROVED <03 NOV 2003 by greenet>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
05 JUL 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** SWISS TREATY AND SWISS IMPLEMENTING LEGISLATION  
**TAGS:** CFED, SZ  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006